

distribution (holder) guidelines for debt securities, this schedule will no longer be necessary.

- **Trustee's certificate**—The Exchange currently requires a certificate from the trustee that shows (1) acceptance of the trust; (2) that the securities have been issued in accordance with the terms of the indenture; (3) what disposition has been made of securities redeemed or refunded; (4) that pledged collateral has been deposited; and (5) what disposition has been made of prior obligations. Issuers often complain that it is unduly burdensome for them to obtain the trustee's certificate because many trustees are reluctant to certify the issuer-specific information required by items (2) through (5). Therefore, the Exchange proposes to require that the certificate show only the trustee's acceptance of the trust. This would conform the Exchange's practice to that of the NYSE.

- **Listing resolution**—The Exchange currently requires bond issuers to obtain a resolution of their board of directors authorizing the filing of the listing application. This requirement is often burdensome to comply with, and can delay a listing if the company's board is not scheduled to meet for a month or more. The requirement to obtain a listing resolution is essentially ceremonial in nature and does not serve any significant purpose. Therefore, the Exchange proposes to eliminate this requirement.<sup>11</sup>

It is expected that by making the application process less burdensome, the Exchange will be able to increase the number of debt listings.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

<sup>11</sup> The Commission notes that the NYSE also does not require listing resolutions. Like the NYSE, the Amex requires an opinion of counsel that the issuance of the debt has been approved by the company's board of directors.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submission should refer to File No. SR-Amex-95-29 and should be submitted by October 11, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36231; File No. SR-NYSE-95-17]

### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Specialists Displaying the Full Size of Certain Orders**

September 14, 1995

#### I. Introduction

On April 21, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to issue an Information Memo discussing procedures under exchange rules with respect to the display of limit orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35687 (May 8, 1995), 60 FR 25751 (May 12, 1995). No comments were received on the proposal.

#### II. Description

The Exchange proposes to issue an Information Memo outlining its policy with respect to displaying certain orders received by a specialist. The policy requires specialists to display the full size of all orders received through the SuperDOT order routing system and the full size of all orders received by specialists manually that are subsequently entered into the electronic book. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer. The policy also sets forth the specialist's responsibility when a member who gives an order requests that less than the full size of the order be shown in the quotation. In that situation, a specialist is only responsible to enter in the electronic book and show the size requested. The portion not requested to be shown will be handled manually as a "held" order, but will be last in terms of time priority to all other orders on the specialist's electronic book at that price. If the specialist is subsequently requested to show an additional portion, or the remainder, of the order, the specialist will enter the price and size into the electronic book, with the order so entered having priority on the book *vis-à-vis* other orders as of the time of entry on the book. The specialist will increase the

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

quotation size to reflect the additional amount entered on the book.

Specialists will be expected to display as soon as practicable any order that, in relation to currently market conditions in a particular security, represents a material change in the supply or demand for that security. For example, if the market in XYZ security is 20 bid to 20¼ offered, 1,000 shares bid and 1,000 shares offered, and the specialist receives an order to sell 10,000 shares at 20¼, the specialist will be expected to change the size of the offer to 11,000 shares as soon as he or she becomes aware of the order. If the quotation already reflects significant supply (demand), and the specialist receives an order that is relatively *de minimis* in relation to such supply (demand), the specialist may take a reasonable period of time, which should not generally exceed two minutes, before updating the quotation, so as to avoid constant revisions of quotations that do not reflect material changes in supply and demand. For example, if the market in XYZ security is 20 bid to 20¼ offered, 5,000 shares bid and 50,000 shares offered, and the specialist receives an order to sell 200 shares at 20¼, the specialist will be permitted to wait a reasonable period of time before changing the size of the offer to 50,200 shares.

Under exceptional circumstances, the specialist will not necessarily display the full quotation size. For example, as noted in NYSE Information Memo 94-32,<sup>3</sup> when a member proposes to effect a block transaction at a significant premium or discount from the prevailing market and the specialist is aware of interest on the contra side, it may be more appropriate for the specialist and Floor Official(s) to gap the quotation in a security for a brief period, generally not exceeding five minutes, with a view toward contacting and/or attracting contra market interest. In such case, the bid or asked price should touch the prior sale price and reflect size of 100 shares. The same principles will also apply to a situation where there is a sudden influx of market orders on one side of the market that would be likely to result in significant price change.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the

requirements of Sections 6(b) and 11A.<sup>4</sup> Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. The Commission also believes the proposal is consistent with Section 11A(1)(b) of the Act, which directs the Commission to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities. Rule 11Ac1-1 under the Act<sup>5</sup> requires exchanges to establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from brokers or dealers, processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors.

The Commission has long believed that transparency—the real-time, public dissemination of trade and quote information—plays a fundamental role in the fairness and efficiency of the secondary markets. Commission efforts to ensure that data concerning trading interest, volume, and prices is available to investors, analysts, and all other participants in the U.S. equity markets, have been predicated on the Commission's belief that transparency helps to link dispersed markets and improves the price discovery, fairness, competitiveness, and, attractiveness of equity markets.

In its Market 2000 Study,<sup>6</sup> the Division of Market Regulation ("Division") recommended that the self-regulatory organizations encourage the display of all limit orders in listed stocks that are better than the best intermarket quotes, because it believed that such a requirement would provide a more accurate picture of trading interest, result in tighter spreads, and contribute to improved price discovery. In NYSE Information Memo No. 93-12, the Exchange advised specialists that, pursuant to NYSE Rule 79A.10,<sup>7</sup> all orders received by specialists through the SuperDOT system were deemed to

be accompanied by an instruction that they be quoted at the limit price on the order when such limit price is *better* than the current quotation.

The Exchange now is expanding this policy by requiring that specialists display the full size of all orders (unless specifically instructed otherwise), including increasing the size of a quotation for orders at the same price as the current bid or offer.<sup>8</sup> The policy being adopted herein, in combination with the policy expressed in NYSE Information Memo 93-12, will require in most circumstances that specialists' quotations reflect the full size of the best prices available for securities traded on the NYSE.<sup>9</sup>

The Commission believes that the NYSE proposal to require specialists to display the full size of limit orders received through SuperDot or limit orders received manually and subsequently entered into the electronic book (unless requested by a member to display less than the full size of an order) will add to the transparency of the market for stocks traded on the NYSE. The proposal will ensure that the

<sup>8</sup> For orders at the same price as the current bid or offer, specialists will be expected to increase the size of the quotation as soon as practicable when, in relation to current market conditions in a particular security, the order represents a material change in the supply or demand for that security. Nonetheless, if the quotation already reflects significant supply (demand), and the specialist receives an order at the current bid or offer that is relatively *de minimis* in relation to such supply (demand) at that price, the specialist may take a reasonable period of time, which should not generally exceed two minutes, before increasing the size of the quotation. The Commission notes that an accumulation of orders considered *de minimis* individually could, in the aggregate, represent a material change in the supply or demand for a security. In that case, the specialist should increase the size of the quotation as soon as practicable to reflect the new aggregate interest.

<sup>9</sup> NYSE Information Memo 93-12 sets forth the Exchange's view that all limit orders received by specialists through the SuperDot system are deemed to contain an implicit instruction to represent such orders at their limit prices. This memo states that specialists must reflect SuperDot limit orders in the Exchange's published quotation at their limit prices as soon as practicable following receipt of the orders. It also states that the mere existence of different size between the existing bid and offer, or a substantial sized bid or offer on the same side of the market as the limit order (compared to the size of the limit order received), would not justify failure to represent the limit order at the limit price immediately. Consequently, the display requirement in Information Memo 93-12 precludes the application of the *de minimis* standard discussed herein (see *supra* note 8) to situations requiring the specialist to change the current quotation to reflect a limit order at a better price. In fact, the policy being adopted in the instant proposal, in conjunction with the policy expressed in Information Memo 93-12, requires specialists in almost all instances to change their quotation upon the receipt of a limit order that betters the market and also to display the full size of that order regardless of its size in relation to the size of the existing bid or offer.

<sup>4</sup> 15 U.S.C. 78f(b) and 78k-1 (1988).

<sup>5</sup> 17 CFR 240.11Ac1-1 (1994).

<sup>6</sup> See Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments*, January 1994, at Study IV ("Market 2000 Study"). The Division also recommended that the NASD consider encouraging the display of limit orders in Nasdaq securities that improve the best Nasdaq quotation.

<sup>7</sup> NYSE Rule 79A.10 requires that all Exchange members represent limit orders at their limit prices when requested by their customers to do so.

<sup>3</sup> See Securities Exchange Act Release No. 34303 (July 1, 1994), 59 FR 35157 (July 8, 1994).

NYSE disseminates quotes that reflect not only the best bid and offer in a stock, but also the depth of the trading interest at those prices. This added transparency should benefit investors and promote the efficiency of the NYSE market.

#### IV. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSE-95-17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
Deputy Secretary.

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BILLING CODE 8010-01-M

[Investment Company Act Release No. 21356; 811-5913]

### The INDEPENDENCE CAPITAL Group of Funds, Inc.; Notice of Application for Deregistration

September 13, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** The INDEPENDENCE CAPITAL Group of Funds, Inc.

**RELEVANT ACT SECTION:** Order requested under section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring it has ceased to be an investment company.

**FILING DATES:** The application was filed on July 26, 1995 and amended on August 29, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

Applicant, Bellevue Park Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware, 19809.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

#### Applicant's Representations

1. Applicant, an open-end, registered investment company, incorporated in the state of Maryland on September 21, 1989. Applicant has three money market series: Money Market Fund; Government Money Market Fund; and Tax-Free Money Market Fund (collectively, the "Money Market Funds"). Each Money Market Fund has two classes of stock: INDEPENDENCE CAPITAL Class and Janney Montgomery Scott Class. In addition, applicant has eight non-money market series: Total Return Growth Fund; Opportunities Fund; Total Return Bond Fund; Municipal Bond Fund; New York Municipal Bond Fund; Short-Intermediate Government Fund; Balanced Fund; and Small Capitalization Stock Fund. Each Non-Money Market Fund has one class of common stock.

2. On September 29, 1989, applicant filed a Notification of Registration on Form N-8A and a registration statement on Form N-1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on January 31, 1990. The initial public offering for: Total Return Growth Fund, Opportunities Fund, and Total Return Bond Fund commenced on February 1, 1990; the Money Market Funds commenced on April 30, 1990; Municipal Bond Fund and New York Municipal Bond Fund commenced on November 1, 1990; Short-Intermediate Government Fund commenced on April 30, 1992; and Balanced Fund and Small Capitalization Stock Fund commenced on December 31, 1993.

#### Merging Series

3. On December 12, 1994, applicant's board of directors approved a reorganization plan whereby shares of common stock of Total Return Growth Fund, Opportunities Fund, Total Return Bond Fund, Municipal Bond Fund, New York Municipal Bond Fund, Short-

Intermediate Government Fund, and Balanced Fund (collectively, the "Non-Money Market Funds") would be exchanged for shares of beneficial interest of corresponding series of Sentinel Group Funds, Inc. (the "Acquiring Fund"). The board approved the reorganization because the Acquiring Fund had twice the asset size of applicant and was generally able to achieve greater economies of scale and lower expense ratios than applicant. In addition, the Acquiring Fund had a greater capacity for distribution.

4. On January 6, 1995, preliminary copies of proxy materials were filed with the SEC. Applicant and the Acquiring Fund also entered into an Agreement and Plan of Reorganization dated as of February 6, 1995 (the "Reorganization Agreement"). On February 9, 1995, definitive proxy materials were distributed to shareholders of the Non-Money Market Funds. At a special meeting held on March 10, 1995, the shareholders of the Non-Money Market Funds approved the Reorganization Agreement.

5. On March 24, 1995, Total Return Growth Fund had 2,289,319.870 shares outstanding with an aggregate and per share net asset value of \$25,653,998 and \$11.21, respectively. On that date, Opportunities Fund had 2,491,972.672 shares outstanding with an aggregate and per share net asset value of \$26,240,738 and \$10.53, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Total Return Growth Fund and Opportunities Fund to the Acquiring Fund's Common Stock Fund in exchange for shares of beneficial interest of Acquiring Fund's Common Stock Fund.

6. On March 24, 1995, Balanced Fund had 426,144.768 shares outstanding with an aggregate and per share net asset value of \$4,084,150 and \$9.58, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Balanced Fund to Acquiring Fund's Balanced Fund in exchange for shares of beneficial interest of Acquiring Fund's Balanced Fund.

7. On March 24, 1995, Total Return Bond Fund had 3,219,052.158 shares outstanding with an aggregate and per share net asset value of \$31,075,198 and \$9.65, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Total Return Bond Fund to Acquiring Fund's Bond Fund in exchange for shares of beneficial interest of Acquiring Fund's Bond Fund.

8. On March 24, 1995, Municipal Bond Fund had 414,491.194 shares outstanding with an aggregate and per share net asset value of \$4,493,940 and

<sup>10</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).